

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
ELKINS**

**RICHARD SHANE ELLIS,**

Petitioner,

**v.**

**CIVIL ACTION NO. 2:11-CV-16  
(BAILEY)**

**WARDEN EVELYN SEIFERT;  
ATTORNEY GENERAL DARRELL MCGRAW, JR.;  
COMMISSIONER JAMES RUBENSTEIN;  
SUPERVISOR THERESA BLAKE;  
JENNIFER BUTKUS;  
MEDICAL DIRECTOR CECILIA JANIZEWSKI;  
A.W.O. KAREN PSZCZOLKOWSKI;  
LT. EDWARD LITTELL;  
SUPERVISOR SKIP ADKINS;**

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge David J. Joel. By Local Rule, this action was referred to Magistrate Judge Joel for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Joel filed his R&R on September 28, 2011 [Doc. 46]. In that filing, the magistrate judge recommended that this Court grant the Motion to Dismiss filed by Darrell McGraw [Doc. 26] and the Motion to Dismiss filed by Theresa Blake, Edward Littell, Karen Pszczolkowski, Skip Adkins, Evelyn Seifert, and James Rubenstein [Doc. 28]. Magistrate Judge Joel also recommended that this Court grant the Motion for Summary Judgment filed by Jennifer Butkus and Cecelia Janiszewski

[Doc. 32]. In addition, the magistrate judge recommended that this Court deny the Motion to Dismiss filed by Richard Shane Ellis [Doc. 45] as moot. Magistrate Judge Joel further recommended that the plaintiff's Motion to Have the Laundry Department Closed [Doc. 12] be denied and the plaintiff's complaint [Doc. 1] be dismissed with prejudice for failure to state a claim upon which relief can be granted.

Pursuant to 28 U.S.C. § 636 (b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). The docket reflects that service was accepted on September 29, 2011 [Doc. 47]. To date, no objections have been filed. Accordingly, this Court will review the report and recommendation for clear error.

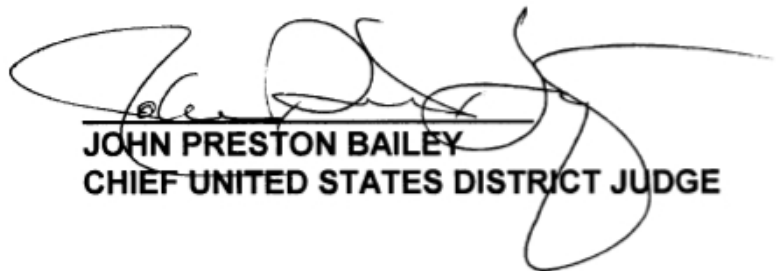
Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation [Doc. 46] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **GRANTS** Darrell McGraw's Motion to Dismiss [Doc. 26]; Theresa Blake, Edward Littell, Karen Pszczolkowski, Skip Adkins, Evelyn Seifert, and

James Rubenstein's Motion to Dismiss [**Doc. 28**]; and Jennifer Butkus and Cecelia Janiszewski's Motion for Summary Judgment [**Doc. 32**]. This Court **DENIES** plaintiff's Motion to Dismiss Evelyn Seifert, James Rubenstein, and Darrell McGraw from this case [**Doc. 45**] **as moot**. Furthermore, this Court **DENIES** petitioner's Motion to Have the Laundry Department Closed [**Doc. 12**] and **DISMISSES with prejudice** the petitioner's complaint [**Doc. 1**]. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

**DATED:** October 21, 2011.



**JOHN PRESTON BAILEY**  
**CHIEF UNITED STATES DISTRICT JUDGE**